

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MARIA HERNANDEZ, O.B.O.
L.A., a minor,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

) CASE NO. 1:10 CV 1295
)
)

) JUDGE DAN AARON POLSTER
)

) MEMORANDUM OF OPINION
) AND ORDER
)
)
)

Before the Court is the Report and Recommendation of Magistrate Judge Kathleen B. Burke issued on September 28, 2011 (“R&R”) (**Doc #: 22**). Plaintiff Maria Hernandez, acting on behalf of L.A., her minor son (“Claimant”), seeks judicial review of the decision of Defendant Michael J. Astrue, the Commissioner of Social Security (“Commissioner”), denying Claimant’s application for Supplemental Security Income under Title XVI of the Social Security Act, 42 U.S.C. § 1381 et seq. (Doc #: 1.) The Magistrate Judge recommends that the Court reverse the Commissioner’s decision and remand the case so that the Administrative Law Judge can conduct further fact-finding, evaluation, and analysis concerning Claimant’s failure to follow prescribed treatment. (Doc #: 22.)

Under the relevant statute:

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.

28 U.S.C. § 636(b)(1) (2009) (emphasis added). In this case, fifteen days have elapsed since the

R&R was issued, and the Commissioner has neither filed an objection nor a request for an extension of time to file one. The failure to timely file written objections to an R&R constitutes a waiver of a de novo determination by the district court of an issue covered in the report. *Thomas v. Arn*, 728 F.2d 813 (6th Cir. 1984), *aff'd*, 474 U.S. 140 (1985); *see United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Despite the lack of objection, the Court has reviewed the Magistrate Judge's thorough, well-written R&R, agrees with the Magistrate Judge's findings, and **ADOPTS** the Magistrate's recommendation that the case be **REVERSED** and **REMANDED** to the Commissioner for further findings consistent with the R&R (**Doc #: 22**).

IT IS SO ORDERED.

/s/ Dan A. Polster October 12, 2011
Dan Aaron Polster
United States District Judge